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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,460	04/29/2002	Juergen Lorenz	H 4136 PCT/US	4081

23377 7590 09/30/2004

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EXAMINER

BISSETT, MELANIE D

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,460

Applicant(s)

LORENZ ET AL.

Examiner

Melanie D. Bissett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-19 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-19 and 22-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1. The rejections based on 35 USC 102 and 103 have been altered to reflect the present amended claims.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 14-17 and 22-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Dorus Klebetechnik. Dorus Klebetechnik (WO 98/50617) can be found on the applicant's Form PTO-1449. For the purposes of this Office action, the examiner refers to the English language equivalent, US 6,482,875 B2.
4. Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.
5. From a prior Office action:

Dorus Klebetechnik teaches a thermoplastic composite material comprising at least 15% by weight of an organic fibrous material and at least 15% by weight of a thermoplastic binder, where the binder contains at least two different polyacrylates (abstract). Preferred fibers include leather fibers (col. 3 lines 26-31) having a stretched length of 0.1-15 mm (col. 3 lines 42-52). The binder may also contain additional thermoplastic binders, including polyolefins, polyamides, polyesters, and polyurethanes (col. 6 lines 44-59). Also, the reference teaches a particularly preferred embodiment including two polyacrylates, a third optional polyacrylate or copolymer, and additives (col. 7 line 63-col. 8 line 9). Thus, the reference teaches binders not consisting solely of two different polyacrylates. Additives including inorganic salts are used in amounts up to 15% by weight (col. 6 lines 50-58). A process teaches mixing the fibers and thermoplastic binder dispersion, treating the mixture with an inorganic copper or aluminum salt, draining the mixture, and drying the mixture (col. 8 lines 20-33). The reference teaches using hot melt adhesives to apply the films to a substrate (col. 10 lines 1-31). Regarding the amounts of fibrous material and binder present, the reference teaches a range of 15% to more than 60% of fiber, where the most preferred range includes 45% by weight of fiber material (col. 3 line 53-col. 4 line 3). Binder materials are

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preferably present in amounts above 30% by weight (col. 6 lines 37-43). Since the reference teaches fibrous materials present in amounts as low as 15% by weight and teaches additives present in amounts up to 15% by weight, it is the examiner's position that the reference also suggests the balance of the composite as the binder. Thus, the reference suggests using at least 40% by weight of a binder.

6. Claims 14-17 and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Ato Chimie. Ato Chimie (GB 2045829A) can be found on the applicant's Form PTO-1449.

7. From a prior Office action:

Ato Chimie teaches a composite material comprising leather and reinforcing fibrous materials in a polymeric thermoplastic binder (abstract). Reinforcing fibers include organic fibrous materials, and binder materials include ethylene/vinyl acetate, polyolefins, polyamides, polyesters, polyacrylates, and vinyl polymers (p. 1 lines 66-93; 106-110). Leather fibers have lengths of 0.2-5 mm (p. 1 lines 61-65). The leather fibers are present in an amount of 30-80% by weight, while the reinforcing fibers are preferably present in amounts of 5-25% by weight (p. 2 lines 21-33). Thus, the combined organic fiber content is as low as 35% by weight, encompassing the applicant's claimed ranges. The binder material has an upper limit of 70% by weight, teaching the applicant's at least 40% by weight. The reference teaches the addition of natural oils, coloring agents, and surfactants (p. 1 lines 119-124), where examples show the combined use of additives under 20% by weight.

8. Claims 14-17 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by K  chler et al.

9. From a prior Office action:

K  chler teaches aqueous plastic dispersions of vinyl polymers and filler, where the filler comprises fibrous material (abstract). The binder material preferably comprises three vinyl polymers, where (c) is a homopolymer (col. 1 lines 43-58). Preferred materials for (c) include polyvinyl acetate (col. 3 lines 9-19). Preferred fibers include leather fibers (col. 3 lines 20-36). The reference teaches a process of adding fibers to a plastic dispersion, treating the dispersion with aluminum sulfate in an additive amount of 5-20% by weight, removing the water, and drying the mixture to form a sheet (col. 3 line 52-col. 4 line 13). Example 1 shows the mixing of 40 g leather

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fibers (15.8% by weight of solids) with 60 g of polyvinyl acetate (28% by weight of binder solids), where the total solid binder content is 213 g (84% by weight of solids).

10. Claims 14-17, 19, and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Worden.

11. From a prior Office action:

Worden discloses waterlaid sheets containing an elastomeric binder, filler particles, and fibrous reinforcing materials for footwear applications (abstract). The composites comprise 5-50% by weight of a fibrous material and 15-80% by weight of a binder (col. 2 lines 7-14). Elastomeric latex materials include polyurethanes, neoprene, and copolymers of butadiene with acrylonitrile or styrene (col. 5 lines 6-13). Fibrous materials include leather fibers having lengths of 0.1-4 mm (col. 6 lines 56-65). The mixture of elastomeric dispersion and fiber is treated with a flocculating agent including aluminum sulfate (col. 10 lines 53-66), pressed, and dried (col. 11 lines 15-32). Examples show mixtures having the applicant's claimed binder and fiber content (example 3) and the applicant's claimed additive content (example 15).

12. Claims 14, 16, 19, and 22-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Addie as evidenced by Williams et al.

Addie discloses a reconstituted leather product comprising leather fibers, synthetic fibers, and a resin (abstract). Fibers used in the invention have various lengths; in one example, 50-60% of the leather fibers have lengths of about 0.25 in (6.35 mm), 25% have lengths of 0.125-0.25 in (3.175-6.35 mm), and 25% have lengths greater than 0.25 in (col. 4 lines 1-18). Thus, the reference teaches using fibers having lengths of 0.1-15 mm. The synthetic fibers used in the invention serve as binding agents (col. 6 lines 31-38) and include thermoplastic polyesters, polyamides, acetates, and polyolefins (col. 6 lines 39-50). Resins to be used in the invention include thermoplastic Vector styrene copolymers by Dexco (col. 7 lines 21-49). Williams teaches that the Vector copolymers cited by Addie are styrene-butadiene block copolymers (col. 4 lines 37-43). Example 2 shows a leather product having 17% by weight of styrene-butadiene resin, 60% by weight of leather fibers, and 24% by weight of thermoplastic fibers. Thus, the example demonstrates a composite comprising at least 10% by weight of styrene-butadiene copolymer and at least 40% by weight of thermoplastic binder. Regarding the additives, the reference teaches including small amounts of wax coloring agents (col. 8 lines 45-50).

Claim Rejections - 35 USC § 103

13. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
14. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuchler et al.
15. From a prior Office action:

Kuchler applies as above, failing to exemplify the use of a binder composition comprising at least 30% by weight of polyvinyl acetate. However, the reference does prefer polyvinyl acetate as the homopolymer and suggests a broad range of homopolymer content (col. 1 lines 43-58). Since the sheets of the invention are shown to have improved vibration-damping properties, it is the examiner's position that it would have been prima facie obvious to use at least 30% by weight of polyvinyl acetate in the binder composition to form a composite sheet having equally improved vibration-damping properties.
16. Claims 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Addie as evidenced by Williams et al.
17. From a prior Office action:

Addie and Williams apply as above, failing to exemplify the use of 15-45% by weight of organic fibrous material. However, the reference teaches a broad range of fiber content (col. 9 lines 25-33). Specifically, the fiber compositions preferably comprise at least 50% of leather fibers. If the leather fibers of example 2 were set to compose 50% of the fiber content (10 lbs), the leather fibers would compose 37% by weight of the total solids of the composition. The leather sheets of the invention are known to have improved appearance and physical properties (col. 2 lines 4-13). It is the examiner's position that it would have been prima facie obvious to use 15-45% by weight of the leather fibers to obtain a leather sheet having equally improved physical and appearance properties.
18. Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuchler et al. in view of Addie.

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19. From a prior Office action:

Küchler applies as above, teaching the general claimed composition and method but failing to teach the leather fiber lengths. Addie discloses leather product materials, where leather fibers having lengths of about 0.05-0.75 in (1.27-19 mm) are used. Addie teaches that the fiber length is important to optimize processing and cohesion (col. 3 lines 43-55). Thus, it is the examiner's position that it would have been prima facie obvious to employ leather fibers having the claimed lengths in Küchler's invention to optimize cohesion and processing of the composites.

20. Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Addie in view of Toyota.

21. From a prior Office action:

Addie applies as above for the making of leather products, failing to mention the use of hot-melt films to form leather laminates. Toyota teaches a method of bonding leather to a backing material via a hot-melt adhesive to form seating articles having improved mechanical strength (abstract). The molten adhesive would inherently form a film between the two outer layers. It is the examiner's position that it would have been prima facie obvious to use Toyota's article-forming method to form leather articles having improved appearance while having improved mechanical strength.

Response to Arguments

22. In response to the applicant's argument that a certified English language translation has been submitted, it is noted that the attached paper submitted with the response filed 16 July 2004 contains no identification as a certified translation of the priority document. No identifying serial number or title is given on the paper to connect the paper with a priority document, and no statement certifying the accuracy of the translation is given. Since the paper is not recognized as a *certified* English language translation connected to the priority document for the instant application, the rejection

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under 35 USC 102(e) based on WO 98/50617 cannot be withdrawn. See 37 CFR 1.55(a)(4).

23. The applicant argues that certain materials are excluded from the amended claims, citing the “consisting essentially of” language. However, such language only excludes those materials that *have been shown to materially affect the basic and novel characteristics of the invention*. See MPEP 2111.03 [R-2]. The current specification teaches that synthetic fibers or other additional additives, including polymeric materials are useful in the invention (see original claim 21; specification, pp. 27-28). Since they are useful in the invention, they cannot be said to affect the material and novel characteristics of the invention. Thus, the synthetic fibers are not excluded from “consisting essentially of” language. Copolymers of materials, including acrylates and vinyl esters, have also been shown to be useful in the invention (current claim 14). Thus, an acrylate/vinyl ester copolymer cannot be said to be excluded by “consisting essentially of” language. The applicant has also not pointed out how additional fillers materially detract from the basic and novel characteristics of the invention. Thus, it is the examiner’s position that these would not be excluded by “consisting essentially of” language.

24. Regarding the applicant’s arguments that K  chler fails to teach polyacrylates having glass transition temperatures lower than -20°C , it is first noted that the reference teaches at least 15% of a polyvinyl ester binder. (1) From one perspective, the reference anticipates the claim, where the composite comprises fibrous additives, a binder consisting of 100% polyvinyl ester compound, and additional polymeric materials.

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Note that additional materials are not excluded by the claim (see above). (2) Also, note that the claims treat polyacrylates differently from acrylic copolymers. Thus, even where the binder is said to comprise a blend of two acrylic/vinyl ester copolymers and a vinyl ester homopolymer, the polyacrylate limitation would not appear to further limit copolymers of acrylates with vinyl esters. (3) From yet another perspective, the reference anticipates the claims, where the composite comprises fibrous additives, a binder containing either (a) alone or ((a) and (c) together), and additional polymeric materials (b) or ((b) and (c) together). Note that examples show acrylic/vinyl ester copolymer (a) having a glass transition temperature below -20°C . Since additional polymeric materials are not excluded by the claims, this scenario also anticipates the claims.

Conclusion

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie D. Bissett whose telephone number is (571) 272-1068. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mdb


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